

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SILVERCREEK MANAGEMENT, INC., *et al.*,

Plaintiffs,

v.

CITIGROUP, INC., *et al.*,

Defendants.

Civil Action No.
02-cv-08881-JPO

**[PROPOSED] ORDER OF FINAL JUDGMENT AND DISMISSAL AS TO
THE FINANCIAL INSTITUTIONS AND BAR ORDER**

WHEREAS, the Court has been informed that the Plaintiffs in the above-captioned Action, Silvercreek Management, Inc., Silvercreek Limited Partnership, Silvercreek II Limited, OIP Limited, and Pebble Limited Partnership (“Silvercreek”), and Defendants Merrill Lynch & Co., Inc., Credit Suisse First Boston (USA), Inc. (n/k/a Credit Suisse (USA), Inc.), Credit Suisse First Boston LLC (n/k/a Credit Suisse Securities (USA) LLC), and Pershing LLC (f/k/a Donaldson, Lufkin & Jenrette Securities Corporation) and Deutsche Bank Alex. Brown Inc. (n/k/a Deutsche Bank Securities Inc.) and Deutsche Bank AG (collectively, the “Financial Institutions”) have entered into Settlement Agreements and Mutual Releases (the “Agreements”), dated as of December 28, 2018, settling all claims against the Financial Institutions in the above-captioned Action;

WHEREAS, for good cause shown, and upon due consideration of the Agreed Motion for Expedited Consideration of, and for Entry of, Order of Dismissal with Prejudice of the Financial Institutions and Bar Order;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Order incorporates by reference the definitions in the Agreements, and all capitalized terms used herein shall have the same meanings as set forth in the Agreements.

2. This Court has the requisite jurisdiction to consider and enter this Order.

3. This Court hereby dismisses the Action in its entirety as to the Financial Institutions, with prejudice and with each Party to bear its own costs. This dismissal does not operate as a dismissal of Silvercreek's claims against the Non-Settling Defendants referred to in the Agreements.

4. Upon the Effective Date, Silvercreek, on behalf of itself, its successors and assigns, and any other person or entity claiming (now or in the future) through or on behalf of them, shall be deemed to have, and by operation of this Order shall have, fully, finally and forever released, relinquished and discharged all Released Claims against the Financial Institutions and shall have covenanted not to sue the Financial Institutions with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting any such Released Claim against the Financial Institutions.

5. All persons or entities, including, without limitation, the Non-Settling Defendants in the Action and any other persons or entities later named as defendants in the Action, are hereby permanently enjoined, barred and restrained from commencing, prosecuting or asserting any action, for contribution, indemnity or otherwise, against the Financial Institutions seeking, as damages or otherwise, the recovery of all or any part of any liability or any settlement which they pay or are obligated to pay or agree to pay to Silvercreek, as a result of such persons' or entities' participation in any acts, facts, statements or omissions that were or could have been alleged in the Action (whether under federal law, state law, foreign law or otherwise) as claims, cross-claims, counterclaims, third-party claims or otherwise, whether asserted in the Action in this Court or in any federal or state court or any other court, arbitration proceeding, administrative agency or other

forum in the United States or elsewhere. The Financial Institutions are hereby permanently enjoined, barred and restrained from commencing, prosecuting or asserting any action, for contribution, indemnity or otherwise, against all persons or entities, including without limitation, the Non-Settling Defendants in the Action and any other persons or entities later named as defendants in the Action, seeking, as damages or otherwise, the recovery of all or any part of any liability or any settlement which the Financial Institutions pay or are obligated to pay or agree to pay to Silvercreek, as a result of the Financial Institutions' participation in any acts, facts, statements or omissions that were or could have been alleged in the Action (whether under federal law, state law, foreign law or otherwise) as claims, cross-claims, counterclaims, third-party claims or otherwise, whether asserted in the Action in this Court or in any federal or state court or any other court, arbitration proceeding, administrative agency or other forum in the United States or elsewhere.

6. Upon the Effective Date, all obligations of the Financial Institutions to Silvercreek or claims against the Financial Institutions arising out of, based upon or otherwise related to the transactions and occurrences that were alleged, or could have been alleged, on behalf of Silvercreek in the Complaint in the Action shall be fully, finally and forever discharged, and all persons and entities shall be permanently barred and enjoined from instituting, prosecuting, pursuing or litigating in any manner (regardless of whether such persons or entities purport to act individually, representatively, or in any other capacity and regardless of whether such persons or entities purport to allege direct claims, claims for contribution, indemnification or reimbursement, or any other claims) any such obligations or claims. Expressly excluded from this release and injunction are claims asserted to enforce the release and other terms and conditions contained in the Agreements.

7. Any person or entity barred and enjoined under this Order may be entitled to appropriate judgment reduction if and when a verdict or final judgment is ultimately reached and will not be prevented from presenting relevant evidence of judgment reduction, provided that nothing herein shall be construed as limiting or holding inapplicable the law of joint and several liability to the extent it pertains to Silvercreek's claims.

8. Upon the Effective Date, the Financial Institutions are deemed to have, and by operation of this Order shall have, fully, finally and forever released, relinquished and discharged Silvercreek from all claims (including unknown claims), arising out of, in any way relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims except to enforce the releases and other terms and conditions contained in the Agreements.

9. This Order is a final judgment in the Action as to all claims among the Financial Institutions, on the one hand, and Silvercreek, on the other hand. This Court finds, for purposes of Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay and expressly directs entry of judgment as set forth herein.

10. Without affecting the finality of this Order in any way, this Court retains continuing jurisdiction over all proceedings related to the implementation and enforcement of the terms of the Agreements.

11. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreements.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE J. PAUL OETKEN
UNITED STATES DISTRICT JUDGE